

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re JDS UNIPHASE CORPORATION  
SECURITIES LITIGATION

No. C 02-1486 CW

ORDER DENYING  
PLAINTIFFS'  
CROSS-MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT

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On August, 24, 2007 the Court entered an order granting in part and denying in part the motion for summary judgment by Defendants JDS Uniphase Corporation (JDS), Josef Straus, Anthony R. Muller and Charles Abbe, granting in part and denying in part Defendant Kevin Kalkhoven's motion for summary judgment and deferring ruling on Lead Plaintiff Connecticut Retirement Plans and

1 Trust Funds' cross-motion for partial summary judgment. The Court  
2 instructed the parties to submit further briefing on Plaintiffs'  
3 argument that Defendants had not met their burden of showing that  
4 the decline in JDS's stock value was based on some event  
5 independent of the alleged misrepresentations for purposes of their  
6 section 11 claims and should therefore be precluded from raising a  
7 negative causation defense at trial. Having considered the  
8 parties' papers, including the parties' supplemental briefing, the  
9 evidence cited therein and oral argument on the motions, the Court  
10 DENIES Plaintiffs' cross-motion for partial summary judgment.

11 In deferring judgment on Plaintiffs' cross-motion, the Court  
12 allowed Defendants to file an expert declaration providing analysis  
13 to support their defense that some or all of the loss related to  
14 Plaintiffs' section 11 claims was caused by factors other than the  
15 alleged misleading statements. Section 11 provides a remedy for  
16 any person acquiring a security based on a "registration statement  
17 [that] contained an untrue statement of a material fact or omitted  
18 to state a material fact required to be stated therein or necessary  
19 to make the statements therein not misleading." 15 U.S.C.  
20 § 77k(a). Plaintiffs' remaining claims based on allegedly false or  
21 misleading registration statements all concern representations  
22 regarding JDS's good will.

23 Defendants provide an expert declaration opining that "JDSU's  
24 potential goodwill write-down disclosed on April 24, 2001 was  
25 neither different from what was expected nor did it (in and of  
26 itself) have implications for future cash flows." Kleidon  
27 Declaration ¶ 25. The expert cites various analysts opining that

1 the predicted write-down of good will was not a significant  
2 indicator of the company's future performance. See id. at ¶ 28.  
3 Similarly, Defendants' expert declares, "Finance theory  
4 demonstrates that the disclosure regarding the actual goodwill  
5 write-down [in July, 2001] would not contribute" to the subsequent  
6 drop in JDS's stock price and cites analysts stating an expectation  
7 that the write-down should have "no impact to the earnings power of  
8 the company" and therefore "little trading impact associated with  
9 [it]." Id. at ¶¶ 31, 33. Further, Defendants' expert cites  
10 various other factors, including "rapidly changing industry  
11 conditions" as the cause of the stock price decline. Id. at ¶ 34.

12 Defendants' expert's opinion is sufficient to establish that  
13 there is a triable question of fact with respect to Defendants'  
14 negative causation defense. Plaintiffs' cross-motion for partial  
15 summary judgment is DENIED (Docket No. 1194).

16 IT IS SO ORDERED.

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18 Dated: 9/25/07



19 CLAUDIA WILKEN  
20 United States District Judge  
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